

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Newport News Division**

MICHAEL MCCABE,

Plaintiff,

v.

**RIVERSIDE REGIONAL HOSPITAL, ET
AL,**

Defendants.

Civil No. 4:23-cv-00111-RBS-RJK

**DEFENDANT’S MOTION TO DISMISS PLAINTIFF’S COMPLAINT
PURSUANT TO FED. R. CIV. P. RULE 12(B)(6)**

Defendant Orthopaedic Surgery and Sports Medicine Specialists of Hampton Roads P.C d/b/a Orthopaedic & Spine Center (incorrectly named as Orthopaedic & Spine Center of Newport News OSC) (hereinafter referred to as “Defendant OSC”), by counsel, hereby filed its Motion to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, and relies upon the arguments and authorities set forth in its accompanying Memorandum of Law in Support of Motion to Dismiss filed together herewith.

WHEREFORE, by reason of the foregoing as well as the accompanying Memorandum of Law in Support, the Defendant OSC respectfully requests that this Court grant its Motion to Dismiss and dismiss Plaintiff’s Complaint in its entirety, with prejudice, for its failure to state a claim upon which relief can be granted, without granting Plaintiff leave to amend, as any amendment would be futile, and that the Court grant judgment in favor of Defendant OSC, and grant such other and further relief in its favor as the Court deems just and proper.

Roseboro Notice

In accordance with Local Rule 7(K), counsel for Defendant OSC hereby notifies the *pro se* Plaintiff, Michael McCabe of the following:

1. Plaintiff is entitled to file a response opposing this Motion, which must be filed within twenty-one (21) days of the date upon which this Motion is filed.
2. If Plaintiff does not file a response, the Court can dismiss this action based on this Motion.
3. In Plaintiff's response, Plaintiff must identify all facts stated by Defendant OSC with which Plaintiff disagrees, and Plaintiff must set forth his version of the facts, supported by affidavit (a written statement sworn to before a notary public and signed under oath) or by filing sworn statements (bearing a certificate that it is signed under penalty of perjury).
4. Plaintiff is also entitled to file a legal brief in opposition to this Motion.

Dated: September 29, 2023

Respectfully submitted,

/s/ Lauren S. Kadish

Lauren S. Kadish (VSB 92822)
Kaufman & Canoles, P.C.
150 West Main Street
Suite 2100
Norfolk, VA 23510
Telephone: (757) 624-3000
Facsimile: (888) 360-9092
lskadish@kaufcan.com

*Defendant Orthopaedic Surgery and Sports
Medicine Specialists of Hampton Roads P.C
dba Orthopaedic & Spine Center
(incorrectly named as Orthopaedic & Spine
Center of Newport News OSC*

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of September, 2023, I will electronically file the foregoing document with the Clerk of the Court using the CM/ECF system, and I hereby certify that I will mail the document by First-Class mail, postage paid to the following non-filing user:

Michael McCabe
218 Center Avenue
Newport News, VA 23601
Plaintiff, pro se

/s/ Lauren S. Kadish

Lauren S. Kadish (VSB 92822)
Kaufman & Canoles, P.C.
150 West Main Street
Suite 2100
Norfolk, VA 23510
Telephone: (757) 624-3000
Facsimile: (888) 360-9092
lskadish@kaufcan.com

*Defendant Orthopaedic Surgery and Sports
Medicine Specialists of Hampton Roads P.C
dba Orthopaedic & Spine Center
(incorrectly named as Orthopaedic & Spine
Center of Newport News OSC*